

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CITY OF NEW YORK, STATE OF CALIFORNIA,
STATE OF ILLINOIS, STATE OF CONNECTICUT,
and COMMONWEALTH OF PENNSYLVANIA,

[PROPOSED]
CIVIL CASE MANAGEMENT PLAN

Plaintiffs,

CV-19-5934 (BMC)

- against -

UNITED STATES POSTAL SERVICE and LOUIS
DeJOY, *in his official capacity as Postmaster
General,*

Defendants.

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COGAN, District Judge

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Federal Rules of Civil Procedure 16 and 26(f).

- A. The case (*is*) (*is not*) to be tried to a jury. [Circle as appropriate].
- B. Non-Expert Discovery:
 - 1. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Eastern District of New York. All non-expert discovery is to be completed by April 18, 2022,¹ which date shall not be adjourned except upon a showing of good cause and further order of the Court. Interim deadlines for specific discovery activities may be extended by the parties

¹ The parties reserve their right to seek expert discovery if the need is demonstrated by fact discovery.

on consent without application to the Court, provided the parties are certain that they can meet the discovery completion date.

The parties shall list the contemplated discovery activities and anticipated completion dates in Attachment A, annexed hereto.

2. Joinder of additional parties must be accomplished by N/A².
3. Amended pleadings may be filed without leave of the Court until N/A.

C. For all causes of action seeking monetary damages, each party shall identify and quantify in Attachment B, annexed hereto, each component of damages alleged; or, if not known, specify and indicate by what date Attachment B shall be filed providing such information.

D. Motions:

1. Upon the conclusion of non-expert discovery, and no later than the date provided below, the parties may file dispositive motions. The parties shall agree to a schedule and promptly submit same for the Court's approval, providing for no more than three rounds of serving and filing papers: supporting affidavits and briefs, opposing affidavits and briefs, and reply affidavits and briefs.
2. The last day for filing a letter, pursuant to Rule III.A.2 of the Court's Individual Practices, requesting a premotion conference in order to file dispositive motions shall be April 25, 2022. (Counsel shall insert a date one week after the completion date for non-expert discovery.)

² Plaintiffs do not currently anticipate adding additional defendants but reserve their right to do so if fact discovery demonstrates that joinder is warranted.

- a. There shall be no cross-motions. Any motions not made by the agreed date shall, unless the Court orders otherwise, not be considered until after the timely-filed motion is determined.
 - b. Papers served and filed by the parties shall conform to the requirements set out in the Court's Individual Practices.
- E. Any request for relief from a date provided in this Case Management Plan shall conform to the Court's Individual Practices and include an order, showing consents and disagreements of all counsel, setting out all dates that are likely to be affected by the granting of the relief requested, and proposed modified dates. Unless and until the Court approves the proposed order, the dates provided in this Plan shall be binding.
- F. Pre-Trial Motions:
- Applications for adjournments and for discovery or procedural rulings will reflect or contain the positions of all parties, as provided by the Court's Individual Rules, and are not to modify or delay the conduct of discovery or the schedules provided in this Case Management Plan except upon leave of the Court.

SO ORDERED.

Dated: Brooklyn, New York

_____, 2021

U.S.D.J.

ATTACHMENT A

The Parties are to list the discovery activities (i.e., production of documents, number of depositions, requests to admit, interrogatories) and anticipated completion dates:

DISCOVERY ACTIVITIES	COMPLETION DATE
1. Initial disclosures	Plaintiffs served Defendants on 11/27/2019. Defendants shall serve by 3/16/2021.
2. First Set of Interrogatories and Request for Production of Documents	Served no later than 3/16/2021 with responses due consistent with the deadlines set forth in the Federal Rules of Civil Procedure
3. Production of documents	Document production shall begin no later than 4/16/2021, and continue thereafter on a rolling basis. Document production shall be completed by 12/16/2021.
4. All Interrogatories and Request for Production of Documents	Served no later than 11/16/2021 with responses due consistent with the deadlines set forth in the Federal Rules of Civil Procedure
5. Requests for Admissions	Served by 4/4/2022
6. Depositions	Completed by 3/16/2022
7. Non-expert fact discovery cut-off	Completed by 4/18/2022

ATTACHMENT B

For all causes of action seeking monetary damages, each party shall identify and quantify each component of damages alleged:

1. PLAINTIFF'S CLAIMS:

The City of New York (“City”), the State of California (“California”), the State of Illinois (“Illinois”), the State of Connecticut (“Connecticut”), and the Commonwealth of Pennsylvania (“Pennsylvania”)’s damages are equal to the amount of unpaid excise taxes on cigarettes delivered by the United States Postal Service (“USPS”) into each respective jurisdiction in violation of the Prevent All Cigarette Trafficking Act (“PACT Act”) (18 U.S.C. Section 1716E(h)). The excise tax for each jurisdiction is as follows:

- For the City: \$15.00 per carton of cigarettes (“per carton”)
- For California: as of April 1, 2017, \$28.70 per carton of cigarettes and \$8.70 per carton prior to that date
- For Illinois: as of July 1, 2019, \$29.80 per carton of cigarettes; from June 24, 2012 through June 30, 2019, \$19.80 per carton; prior to June 24, 2012, \$9.80 per carton
- For Connecticut: as of December 1, 2017, \$43.50 per carton of cigarettes; from July 1, 2016 through November 30, 2017, \$39.00 per carton; from October 1, 2015 through June 30, 2016, \$36.50 per carton; prior to October 1, 2015, \$34.00 per carton
- For Pennsylvania: as of August 1, 2016, \$26.00 per carton of cigarettes; from November 1, 2009 through July 31, 2016, \$16.00 per carton; from January 7, 2004 through October 31, 2009, \$13.50 per carton; prior to January 7, 2004, \$10.00 per carton.

The total amount of cigarettes delivered by the USPS into each jurisdiction is a matter for discovery.

Defendants deny that Plaintiffs are entitled to any damages.

2. COUNTERCLAIMS AND CROSS-CLAIMS:

N/A

3. THIRD-PARTY CLAIMS:

N/A